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STATE OF DELAWARE
DELAWARE DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENTAL CONTROL

In re: Barbara Hicks Site -)
DE-1804 - Proposed Plan of)
Remedial Action)

A public hearing was taken pursuant to notice via remote videoconferencing of all participants beginning at 6:00 p.m., on Wednesday, April 5, 2023, before Carrie Gold, Registered Skilled Court Reporter.

BEFORE: Lisa Vest, Hearing Officer
FOR THE DIVISION: Paul Will, Program Manager II
Shahrose Ali, Project Officer,
Hydrologist 1

Katera Moore

Anna Wicks

Sascha Mohammed

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I N D E X

	Page
Introduction by Hearing Officer Vest.....	3
Presentation by Paul Will.....	7
Entry of Department's Exhibits 1 through 9....	20
Conclusory Remarks by Hearing Officer Vest.....	21
Certificate of Reporter.....	25

1 HEARING OFFICER VEST: Good evening. It
2 is 6:00 p.m. on Wednesday, April 5, 2023. I believe that
3 everybody is connected and ready so we're going to go
4 ahead and begin tonight's proceedings.

5 First of all, I want to thank everybody
6 for taking the time out of their busy schedules to join
7 us this evening. We are here tonight to perform the
8 virtual public hearing regarding the department's
9 proposed plan of remedial action for the Barbara Hicks
10 site.

11 For those of you that may not know me, my
12 name is Lisa Vest, and Secretary Garvin has designated me
13 to serve as hearing officer for tonight's proceedings.

14 I have a few introductory remarks before
15 we allow the department to take the stage, as it were, so
16 bear with me for the next couple of minutes.

17 Pursuant to DNREC's standard hearing
18 procedures, this hearing is being conducted virtually.
19 While there are no sign-in sheets to document physical
20 attendance tonight, the Zoom platform does generate a
21 list of those that are with us tonight virtually
22 attending, and the department can keep track of it so we
23 know who has joined us tonight, regardless of whether
24 you're here just to check out the information and see

1 what's going on, or, you know, perhaps just learning
2 about this project today. Either way, I thank you all
3 for your interest in this matter.

4 Again, at the conclusion of these
5 introductory remarks, I will be turning the floor over to
6 Paul Will. He is the representative for the Division of
7 Waste this evening, and he's going to be offering a brief
8 presentation for the record.

9 By the way, the presentation that you're
10 getting ready to hear tonight is posted on the hearing
11 web page dedicated to this matter. If you go there, you
12 can find, not only the presentation that we're getting
13 ready to see, but when the court reporter's transcript
14 has been completed and given to us, we'll post that on
15 there, as well as any comments that come in between now
16 and when the comment period closes. We put those
17 comments up there too so a lot can be learned about this
18 proposal by viewing the web page, and I would encourage
19 everybody to do that.

20 Before we go any further, I do need to set
21 some parameters. First and foremost, this is a formal
22 legal hearing. It is not a public information session or
23 a town hall meeting or any other kind of informal
24 workshop situation, nor is the purpose of tonight's

1 proceeding to advocate in any way, not on behalf of the
2 department, not on behalf of the project, or even the
3 public, but rather, the purpose of tonight's hearing is
4 to provide the platform to advise the people of this
5 proposed action of the department and also providing the
6 public ample opportunity to provide comment for the
7 secretary's consideration prior to any decision being
8 made in this matter.

9 The comments being received by the
10 department in any given hearing matter are important.
11 These concerns that are voiced as comments by the public
12 become incorporated into the hearing record. While all
13 comments are appreciated, I must remind everyone that
14 comments must be limited solely to the subject matter of
15 tonight's hearing.

16 I also want to make sure that everyone
17 realizes that only comments submitted directly to DNREC
18 and entered by the hearing officer into the formal
19 hearing record actually get included into that record.
20 We do not party with any third-party organizations or
21 anything that you might see on social media. There are
22 various mechanisms by which the public can submit comment
23 for the record, and I'll talk about that following the
24 proceeding tonight.

1 In addition to everything that I've
2 already said, please note the following additional
3 parameters that are applicable to all DNREC public
4 hearings. Number one, as I've previously mentioned, all
5 comment received must be limited solely to the subject
6 matter of tonight's hearing.

7 Number two, in order to ensure that
8 everyone who wishes to offer comment for the secretary's
9 consideration is accommodated, the hearing record is not
10 going to close at the conclusion of tonight's proceeding.
11 Rather, we're going to remain open from now through
12 April -- what is it? -- April 21st. I'm sorry. I
13 apologize for that. The public comment period is going
14 to be held open through April 21st. So even if you have
15 not submitted comment up until now, all comment bears the
16 same weight, and whether it is received now or at the end
17 of the comment period, it will all be included in the
18 record and given to the secretary for his consideration.

19 There is only one authentic record of this
20 formal proceeding tonight, and it is the official court
21 reporter's transcript which, again, will be posted on the
22 hearing page as soon as it has been received.

23 As I've previously mentioned, the
24 statutory purpose of tonight's hearing is to build a

1 record with regard to this proposed action.

2 And lastly, it's very important to
3 remember that no decision has been made about this
4 proposal as of right now, nor will any decision be made
5 on it at the conclusion of tonight's proceedings. Again,
6 we are here to vet this proposal to the public and to
7 provide some kind of platform by which the public can be
8 made aware of the fact that this proposal is currently
9 before the department, and how and when people may submit
10 comment for the hearing record. Again, it will remain
11 open through April 21st should folks wish to do so.

12 That being said, I am going to turn the
13 floor over right now to Paul Will. He is with the
14 Division of Waste with DNREC, and I believe Paul will be
15 narrating the brief presentation. So when you are ready,
16 sir, you may begin.

17 MR. WILL: Okay, thank you, Ms. Vest.

18 Good evening, ladies and gentlemen. My
19 name is Paul Will. I am the program manager of the DNREC
20 remediation section. I'm joined tonight also by
21 Mr. Shahroze Ali, who is the DNREC remediation section
22 project manager for the Barbara Hicks site, and Shahroze
23 was very instrumental in helping us put together the
24 information for tonight's presentation so I thank him

1 tremendously for that.

2 Tonight's presentation will contain
3 information on the DNREC remediation section. It will
4 also contain some site history of the Barbara Hicks Park
5 site itself. It will contain what was the purpose of the
6 remedial investigations and the results that were derived
7 from the investigation that was conducted at the park
8 site. Also, it will contain information on the contents
9 of DNREC's proposed plan of remedial action and a remedy
10 selection for the Barbara Hicks site that was recently
11 completed.

12 So with that, a little bit about what is
13 the DNREC remediation section and what we do. Our goal
14 was to stop direct significant exposures, prioritize
15 response actions to reduce the worst risk first, manage
16 potential risks to an acceptable level, and communicate
17 to the public on status of cleanup of local sites
18 utilizing various remedial programs.

19 Some of those remedial programs that we do
20 quite a significant amount of work with include work
21 under our Hazardous Substance Cleanup Act, our Delaware
22 Brownfields Program, our Delaware Voluntary Cleanup
23 Program, which this site is enrolled in with the City of
24 Wilmington, and also our Long-Term Stewardship Program.

1 So what is the Hazardous Substance Cleanup
2 Act, commonly referred to as HSCA? Delaware's Hazardous
3 Substance Cleanup Act, better known as HSCA, is actually
4 7 Delaware Code, Chapter 91, which provides DNREC the
5 statutory authority to take enforcement actions against
6 responsible parties to ensure cleanup at sites with the
7 release or imminent threat of release of a hazardous
8 substance.

9 Delaware's Brownfield Development Program
10 encourages the cleanup and redevelopment, reuse, or
11 expansion of real properties, which may be complicated by
12 the presence or potential presentation of a hazardous
13 substance, which is precluding the redevelopment or the
14 transfer of said properties.

15 Then there's the Voluntary Cleanup
16 Program, which I mentioned this site is currently
17 enrolled in. The City of Wilmington entered into a
18 voluntary cleanup agreement for this site. The DNREC
19 Voluntary Cleanup Program is available to all parties who
20 own property and may be liable for the contamination of
21 the property, but who wish to settle their liabilities
22 with DNREC under the Hazardous Substance Cleanup Act.

23 DNREC's Long-Term Stewardship Program is
24 the maintenance and monitoring of the completed remedial

1 measures taken at the site to maintain the desired level
2 of protection of human health and the environment over an
3 extended period of time.

4 So that's a little bit about DNREC and
5 what the remediation section does. And how does that
6 relate to the site that we're dealing with?

7 So here is a little bit of history of the
8 Barbara Hicks site park, referred to as OU-1, which is
9 the soils of Barbara Hicks Park. The Park itself is
10 located at the intersection of Bradford and B Street in
11 Southbridge that currently consists of a playground, a
12 basketball court, and some open green, along with some
13 playground equipment for park visitors.

14 The park is approximately 1.36 acres in
15 size and is comprised of eight tax parcels. From the
16 1940s to the 1970s, the site was pretty much undeveloped.
17 It was an open area vegetated with trees. There was
18 evidence of filling on the site, which appeared as early
19 as 1940, and continued for approximately two decades.

20 And then in the 1970s or early 1980s, the
21 open area was developed into the current public park,
22 which is there today. And you can see from the images
23 that, in this photograph, although taken from a
24 relatively high altitude, the area inside the little box

1 is the current Barbara Hicks Park site. You can kind of
2 see the basketball court and some of the amenities that
3 are within it.

4 So again, this site has been entered into
5 DNREC's voluntary cleanup program. And as part of that
6 program, a remedial investigation was conducted on the
7 property. A remedial investigation is often referred to
8 as an RI. The purpose of the RI was to document the
9 existing environmental conditions of the site soils at
10 the site, to identify contaminants that may pose a threat
11 to human health or the environment. It was also done to
12 present a statement of relative risk and to evaluate the
13 need for remedial actions to reduce or eliminate those
14 risks.

15 So we have a timeline of when DNREC was
16 involved in the site, and it goes back to, actually, last
17 summer. DNREC was provided with a limited phase two
18 investigation. Phase two is really just another name for
19 a type of investigation where actual samples were
20 collected on a given site. The intent of a phase two
21 investigation is really just to identify whether or not
22 there are any contaminants present at the site. And this
23 investigation, this limited phase two, was conducted in
24 June 2022.

1 From review of that phase two
2 investigation, it was determined that additional
3 investigation was needed, and the city entered into our
4 Voluntary Cleanup Program by completing a Voluntary
5 Cleanup Program Agreement in August of 2022.

6 The actual remedial investigation
7 fieldwork was conducted and completed in September of
8 2022. And during that remedial investigation, it
9 involved installing eight soil borings that were advanced
10 to depths ranging from the ground surface to 4 to 8 feet
11 below ground surface.

12 And there, underneath of that, you can see
13 the demarcations between shallow, surface, and deep.
14 Surface, meaning 0 to 6 inches below ground surface;
15 shallow is 0 to 2 feet below ground surface; and deep
16 soils were considered anything greater than 2 feet below
17 ground surface. And from those points that's where our
18 samples were collected.

19 All of the samples collected were screened
20 for volatile organic compounds, semi-volatile organic
21 compounds, pesticides, PCBs, and metals at the DNREC
22 Lukens Drive screening lab. Based on the screening lab
23 results, the field observations, and spatial
24 distribution, samples were sent for confirmatory analysis

1 at Eurofins laboratory.

2 The results of the confirmatory analysis
3 determined that a residential and recreator human health
4 risk did exist, which required further assessment.

5 This is a sample location map that was
6 derived from the investigation. It has the -- you can
7 see multiple lines on the site. The site itself is
8 everything within the darker orange line presented on
9 this figure. The lighter colored lines are the
10 demarcations for the individual tax parcels that make up
11 Barbara Hicks Park site.

12 And you can see within this figure, these
13 are where the soil samples were collected from. Some of
14 these sample locations have letters before them. Some
15 are GP, that stands for Geoprobe samples that were
16 collected. This is typically a truck-mounted pneumatic
17 hammer that pounds split spoons into the ground to
18 collect soil cores, and the said cores are then jarred
19 and sent to the laboratory for analysis.

20 The locations marked with HA stand for
21 hand auger. These are actually physically installed by a
22 person by twisting a metallic auger into the ground that
23 has a collection bucket at the end of it, and then the
24 same process is run where the samples are collected from

1 the bucket, jarred, and sent to the laboratory for
2 analysis.

3 So again, you can see the distribution of
4 the samples throughout the site, with the focus on some
5 of the samples in the areas where we knew recreators and
6 park visitors will be utilizing those areas.

7 So what did we learn? What were the RI
8 results that were derived from the investigation?

9 As previously mentioned, there were eight
10 borings collected anywhere from 0 to 8 feet below ground
11 surface. Shallow, surface, and deep soils were screened
12 for VOCs, SVOCs, pesticides, PCBs and metals at the
13 DNREC-RS Screening Laboratory.

14 After lab screening, the following
15 compounds were found to exceed HSCA screening levels and
16 needed to be sent for confirmatory analysis. Some of
17 those compounds consisted of semi-volatile organic
18 compounds, such as benz[a]anthracene, benzo[a]pyrene,
19 benzo[b]fluoranthene, dibenz(a,h)anthracene,
20 indeo[1,2,3-cd]pyrene, naphthalene.

21 And then a quantity of metals were also
22 selected for further analysis, those being antimony,
23 arsenic, barium, cadmium, copper, lead, manganese,
24 nickel, thallium, and cyanide. And all of these metals

1 and semi-volatile organic compounds are typically found
2 in urban environments that have had filling or a lot of
3 industrial uses. So finding these things in these areas
4 was expected.

5 So based upon the confirmatory analysis
6 and the actual use of the park, we were compelled to do a
7 human health risk assessment. Compounds exceeding the
8 HSCA screening levels were identified as contaminants of
9 potential concern that required a human health risk
10 assessment being conducted.

11 Carcinogenic and non-carcinogenic risk was
12 evaluated for exposure to contaminants of potential
13 concern on-site. The shallow soil, which is where
14 residents, outdoor workers, excavation workers, indoor
15 workers, composite workers, recreators and trespassers
16 underwent the human health risk assessment, along with
17 the combined soil.

18 An eco-risk assessment was also conducted
19 based upon the compounds that were detected and found
20 that, while contaminants of potential ecological concern
21 are present on the site, it was determined in the
22 eco-risk assessment that ecological risks are not a
23 concern at this time.

24 This is just a table that was developed

1 regarding the human health risk assessment. You can see
2 across the top of the table, those are the exposure units
3 that ran through the human health risk assessment. The
4 ones I've already mentioned, the residential exposure,
5 excavation, indoor worker, outdoor worker, a composite
6 worker, and trespasser and a recreator. A recreator
7 would be a park user, someone who is utilizing the park.

8 The colored boxes underneath, green was
9 everything that was an acceptable risk. The pink, or
10 reddish, boxes were those risks that were found to be
11 unacceptable. And as you can see, the carcinogenic and
12 non-carcinogenic failed for if a resident was living on
13 the property. Of course, there aren't people living on
14 the property, but we do have recreators that use the
15 property, and there was an unacceptable risk for
16 carcinogenic risk for a recreator.

17 So following the actual investigation and
18 the report generation by the City's consultant, DNREC put
19 together the proposed plan of remedial action. And what
20 the proposed plan does is it summarizes the cleanup for
21 the remedial action proposed to address the contamination
22 found in the site, and that proposed plan is put out by
23 the department for public comment.

24 There is a legal notice that's generated

1 once the proposed plan is ready for publication. It gets
2 advertised in the newspaper, in this case The News
3 Journal, and I believe a couple of other periodicals
4 within Delaware that have a 20-day public comment period
5 advertised.

6 The original proposed plan was issued on
7 February 15, 2023. Shortly after publishing the proposed
8 plan, DNREC received a request for an extension of the
9 public comment period. This public notice for the
10 extension of the public comment period was issued on
11 March 5, 2023. And then three days after the public
12 notice for the extension of public comment was when DNREC
13 received a request for a public hearing on the Barbara
14 Hicks Park, and that was issued three days later on
15 March 8, 2023.

16 So this takes us into really the meat of
17 the proposed plan and what was considered the remedy
18 selection for the park. And following completion of the
19 RI, as mentioned, a proposed plan was published that
20 required the following: It required submittal of a
21 remedial action work plan to the DNREC remediation
22 section.

23 There was a requirement to prevent human
24 exposure to soil with constitutes that exceeded a 1 times

1 10 to the negative 5 cumulative cancer risk. And this
2 would be accomplished by placement of 1 foot soil, stone,
3 or impervious cap cover over impacted areas to restrict
4 access to underlying soil, or excavation of soil with
5 elevated concentrations of PHAs and metals and disposal
6 of said soil offsite.

7 There was the preparation and
8 implementation requirement of a site-specific
9 Contaminated Materials Management Plan and a Health and
10 Safety Plan. The Contaminated Materials Management Plan
11 would need to be submitted to DNREC for approval within
12 60 days of the issuance of the Final Plan of Remedial
13 Action.

14 The Contaminated Materials Management Plan
15 will provide guidance to enable construction workers to
16 safely handle any potentially contaminated soil at the
17 site. They would be the preparation and implementation
18 of an environmental covenant. The environmental covenant
19 must be submitted to DNREC for approval within 60 days of
20 issuance of the final plan, should the site undergo
21 the capping option.

22 The environmental covenant, consistent
23 with Delaware's Uniform Environmental Covenants Act, also
24 referred to as 7 Delaware Code, Chapter 79, Subchapter 2,

1 must be reported in the Office of New Castle County
2 Recorder of Deeds within 90 days of issuance of the final
3 plan of remedial action.

4 The environmental covenant must include
5 the following activity and/or use restrictions. One,
6 there would need to be a use restriction. Use of the
7 property would need to be restricted solely to those
8 nonresidential uses permitted within commercial,
9 manufacturing, or industrial districts.

10 Two, there would be an interference with
11 remedy restriction. There shall be no digging, drilling,
12 excavating, grading, constructing, earth moving, or any
13 other land-disturbing activities on the site without
14 prior written approval from DNREC.

15 And, third, compliance with the
16 aforementioned Contaminated Materials Management Plan.
17 All work required by the Contaminated Materials
18 Management Plan must be performed to DNREC's satisfaction
19 in accordance with the plan.

20 There would be the need to prepare and
21 implement a site-specific Long-Term Stewardship Plan if
22 the cap/cover option is selected. If the excavation and
23 disposal method is completed, there would be no
24 requirement for a Long-Term Stewardship Plan.

1 If there is a Long-Term Stewardship Plan
2 needed, it shall be submitted to DNREC for approval
3 within 60 days of DNREC's approval of the Remedial Action
4 Work Plan. The LTS plan will detail cap monitoring
5 requirements and schedule to be followed in order to
6 monitor the integrity of the site capping components once
7 they are placed on the site.

8 And the last two items would be submittal
9 of a Remedial Action Completion Report to DNREC within
10 60 days of the completion of the required remedial
11 actions. And lastly, a COCR for OU-1 soils would be
12 issued following completion of all the required remedial
13 actions.

14 This is a list of the exhibits, basically
15 all of the work that has been done on the site, and I
16 believe this will go into the hearing record.

17 And with that, that concludes the
18 presentation that DNREC has put together tonight for the
19 Barbara Hicks Park. I very much appreciate everyone's
20 attention to the presentation. And at this time, I will
21 turn the proceedings back over to our hearing officer.
22 So thank you very much, ladies and gentlemen.

23 HEARING OFFICER VEST: Thank you very
24 much, Mr. Will.

1 Just a few things for clarification on
2 behalf of the hearing record. Are the exhibits that
3 appeared in your presentation just now Exhibits 1 through
4 9, I believe, the same as those that have been posted on
5 the DNREC hearing web page dedicated to this matter?

6 MR. WILL: Yes, they are.

7 HEARING OFFICER VEST: Okay. And have
8 they been changed or altered in any way?

9 MR. WILL: No, they have not.

10 HEARING OFFICER VEST: Excellent. Okay.
11 Let the record reflect that DNREC proposed Exhibits 1
12 through 9, as identified both on the PowerPoint
13 presentation, as well as the hearing web page dedicated
14 to this matter are hereby incorporated into the formal
15 hearing record.

16 Does the department have anything further
17 they wish to offer for the record at this time?

18 MR. WILL: Not at this time.

19 HEARING OFFICER VEST: Excellent. Thank
20 you very much.

21 Just a few more remarks before we conclude
22 this evening. Normally, if anyone had preregistered
23 requesting to offer live comment at the hearing, we would
24 now proceed toward that portion of the event. However,

1 no members of the public did choose to preregister to do
2 that so we will not be recognizing anybody for live
3 comment this evening.

4 However, no one should feel dismissed. No
5 one should feel unaccommodated as it were because there
6 are a number of ways to offer comment and submit it to
7 DNREC for the record. And, the thing to keep in mind is,
8 when you offer comment live at the hearing, you're
9 limited to three minutes for your presentation or for
10 your comments to be entered, whereas there is absolutely
11 no limit on the amount of comment that you can give the
12 department.

13 Just a couple of parameters and mechanisms
14 that I'm going to explain now. Comments must be made in
15 writing, and they may be submitted one of three different
16 ways. If you go on the hearing page, you'll see a button
17 that says, Submit a comment, and you can click on that
18 link. It will take you to a public comment form, and it
19 will shoot it right to me so you can submit your written
20 comment through that comment link on the hearing page.

21 You can send it via email to
22 DNREChearingcomments@delaware.gov. And you can also use
23 standard United States Postal Service, and send your
24 written comments to me, as the hearing officer, at the

1 addresses that are listed, both on the hearing page and
2 on the various legal notices that have already been
3 published in this matter.

4 And again, as I've mentioned before, all
5 comment bears the same weight, whether it had come in
6 live tonight at the hearing, whether it came in prior to
7 the hearing, or whether it comes in on the absolute last
8 day. All comment, as long as it's specifically related
9 to the subject matter of tonight's hearing, it bears
10 equal weight, it will be incorporated into the hearing
11 record, and it will be provided to the secretary for his
12 consideration prior to any determination being made
13 tonight.

14 Again, the platform this evening and our
15 formal public hearings provide the platform for people to
16 hear about projects, to hear about permits, and to offer
17 a platform for live comment, should the public
18 preregister to do so, and most importantly, to make sure
19 that people know of the various ways that they can offer
20 comment for the record.

21 Again, the record is open through
22 April 21st so I would encourage everybody, go back to the
23 hearing page. Look at all the information. There's a
24 lot on there. You can learn about it. You can make

1 notes. Again, it is limitless how much you want to
2 submit. There's no page limit, nor is there any specific
3 limit to how many times you may submit comment. So feel
4 free to review all of the material that the department
5 has put out there, and, again, as long as it's received
6 by April 21st, it will bear the same weight, and it will
7 be incorporated into the record.

8 I want to thank the department
9 representatives that were here tonight and offered their
10 presentation and, again, encourage everybody to check out
11 what is available online.

12 Thanks, everyone. Have a fantastic rest
13 of the week. This hearing is adjourned.

14 (The hearing concluded at 6:30 p.m.)
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C E R T I F I C A T E

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I do hereby certify that the foregoing hearing was taken before me, pursuant to notice, at the time and place indicated; that the statements of participants were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the transcript is a true record of the statements made by the participants; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 17th day of April A.D. 2023.



Notary Public - Registered Skilled Reporter

0	3	accommodated	advise 5:4
0 12:14,15 14:10	3 2:3	6:9	advocate 5:1
1	4	accomplished	aforemention...
1 1:16 2:5 10:8 17:24 18:2 20:11 21:3,11	4 12:10	18:2	19:16
1,2,3 14:20	5	accordance	agreement 9:18
1.36 10:14	5 1:11 3:2 17:11 18:1	19:19	12:5
10 18:1	6	acres 10:14	ahead 3:4
11850 25:16	6 12:14	act 8:21 9:2,3 9:22 18:23	aided 25:9
15 17:7	60 18:12,19 20:3,10	action 1:6 3:9 5:5 7:1 8:9	ali 1:16 7:21
17th 25:14	6:00 1:11 3:2	16:19,21 17:21	allow 3:15
1804 1:5	6:30 24:14	18:13 19:3	altered 21:8
1940 10:19	7	20:3,9 25:12	altitude 10:24
1940s 10:16	7 2:4 9:4 18:24	actions 8:15 9:5 11:13	amenities 11:2
1970s 10:16,20	79 18:24	20:11,13	amount 8:20 22:11
1980s 10:20	8	activities 19:13	ample 5:6
2	8 12:10 14:10 17:15	activity 19:5	analysis 12:24 13:2,19 14:2 14:16,22 15:5
2 12:15,16 18:24	9	actual 11:19 12:6 15:6	anna 1:18
20 2:5 17:4	9 2:5 21:4,12	16:17	anthracene
2022 11:24 12:5,8	90 19:2	actually 5:19 9:3 11:16	14:18,19
2023 1:11 3:2 17:7,11,15 25:15	91 9:4	13:21	antimony
21 2:6	a	addition 6:1	14:22
21st 6:12,14 7:11 23:22 24:6	a.d. 25:15	additional 6:2 12:2	anybody 22:2
25 2:7	absolute 23:7	address 16:21	apologize 6:13
	absolutely 22:10	addresses 23:1	appeared 10:18 21:3
	acceptable 8:16 16:9	adjourned 24:13	applicable 6:3
	access 18:4	advanced 12:9	appreciate 20:19
		advertised 17:2 17:5	appreciated 5:13
			approval 18:11 18:19 19:14

20:2,3 approximately 10:14,19 april 1:11 3:2 6:12,12,14 7:11 23:22 24:6 25:15 area 10:17,21 10:24 areas 14:5,6 15:3 18:3 arsenic 14:23 assessment 13:4 15:7,10 15:16,18,22 16:1,3 attendance 3:20 attending 3:22 attention 20:20 auger 13:21,22 august 12:5 authentic 6:19 authority 9:5 available 9:19 24:11 aware 7:8	20:19 barium 14:23 based 12:22 15:5,19 basically 20:14 basketball 10:12 11:2 bear 3:16 24:6 bears 6:15 23:5 23:9 beginning 1:11 behalf 5:1,2 21:2 believe 3:2 7:14 17:3 20:16 21:4 benz 14:18 benzo 14:18,19 better 9:3 bit 8:12 10:4,7 borings 12:9 14:10 box 10:24 boxes 16:8,10 bradford 10:10 brief 4:7 7:15 brownfield 9:9 brownfields 8:22 bucket 13:23 14:1 build 6:24 busy 3:6 button 22:16	c c 25:1,1 cadmium 14:23 cancer 18:1 cap 18:3 19:22 20:4 capping 18:21 20:6 carcinogenic 15:11,11 16:11 16:12,16 carrie 1:12 case 17:2 castle 19:1 cd 14:20 certificate 2:7 certify 25:4 changed 21:8 chapter 9:4 18:24 check 3:24 24:10 choose 22:1 city 8:23 9:17 12:3 city's 16:18 clarification 21:1 cleanup 8:17 8:21,22 9:1,3,6 9:10,15,18,19 9:22 11:5 12:4 12:5 16:20 click 22:17	close 6:10 closes 4:16 cocr 20:11 code 9:4 18:24 collect 13:18 collected 11:20 12:18,19 13:13 13:16,24 14:10 collection 13:23 colored 13:9 16:8 combined 15:17 come 4:15 23:5 comes 23:7 comment 4:16 5:6,22 6:5,8,13 6:15,15,17 7:10 16:23 17:4,9,10,12 21:23 22:3,6,8 22:11,17,18,20 22:20 23:5,8 23:17,20 24:3 comments 4:15 4:17 5:9,11,13 5:14,17 22:10 22:14,24 commercial 19:8 commonly 9:2 communicate 8:16
b b 10:10 14:19 back 11:16 20:21 23:22 barbara 1:5 3:9 7:22 8:4,10 10:8,9 11:1 13:11 17:13			

compelled 15:6 completed 4:14 8:11 9:24 12:7 19:23 completing 12:4 completion 17:18 20:9,10 20:12 compliance 19:15 complicated 9:11 components 20:6 composite 15:15 16:5 compounds 12:20,21 14:15 14:17,18 15:1 15:7,19 comprised 10:15 computer 25:9 concentrations 18:5 concern 15:9 15:13,20,23 concerns 5:11 conclude 21:21 concluded 24:14 concludes 20:17	conclusion 4:4 6:10 7:5 conclusory 2:6 conditions 11:9 conducted 3:18 8:7 11:6,23 12:7 15:10,18 confirmatory 12:24 13:2 14:16 15:5 connected 3:3 consideration 5:7 6:9,18 23:12 considered 12:16 17:17 consisted 14:17 consistent 18:22 consists 10:11 constitutes 17:24 constructing 19:12 construction 18:15 consultant 16:18 contain 8:2,4,5 8:8 contaminants 11:10,22 15:8 15:12,20 contaminated 18:9,10,14,16	19:16,17 contamination 9:20 16:21 contents 8:8 continued 10:19 control 1:3 copper 14:23 cores 13:18,18 correctly 25:7 counsel 25:11 county 19:1 couple 3:16 17:3 22:13 course 16:13 court 1:12 4:13 6:20 10:12 11:2 covenant 18:18 18:18,22 19:4 covenants 18:23 cover 18:3 19:22 cumulative 18:1 current 10:21 11:1 currently 7:8 9:16 10:11 cyanide 14:24	day 17:4 23:8 25:14 days 17:11,14 18:12,19 19:2 20:3,10 de 1:5 dealing 10:6 decades 10:19 decision 5:7 7:3 7:4 dedicated 4:11 21:5,13 deeds 19:2 deep 12:13,15 14:11 delaware 1:1,2 8:21,22 9:4 17:4 18:24 delaware's 9:2 9:9 18:23 delaware.gov. 22:22 demarcations 12:13 13:10 department 1:2 3:15,22 5:2,5 5:10 7:9 16:23 21:16 22:12 24:4,8 department's 2:5 3:8 depths 12:10 derived 8:6 13:6 14:8
		d	
		d 2:1 darker 13:8	

<p>designated 3:12 desired 10:1 detail 20:4 detected 15:19 determination 23:12 determined 12:2 13:3 15:21 developed 10:21 15:24 development 9:9</p>	<p>17:21 18:11,19 19:14 20:2,9 20:18 21:5,11 22:7 dnrec's 3:17 8:9 9:23 11:5 19:18 20:3 dnrehearing... 22:22 document 3:19 11:8 drilling 19:11 drive 12:22</p>	<p>ensure 6:7 9:6 entered 5:18 9:17 11:4 12:3 22:10 entry 2:5 environment 10:2 11:11 environmental 1:3 11:9 18:18 18:18,22,23 19:4 environments 15:2 equal 23:10</p>	<p>exceed 14:15 exceeded 17:24 exceeding 15:7 excellent 21:10 21:19 exhibits 2:5 20:14 21:2,3 21:11 exist 13:4 existing 11:9 expansion 9:11 expected 15:4 explain 22:14 exposure 15:12 16:2,4 17:24 exposures 8:14 extended 10:3 extension 17:8 17:10,12</p>
<p>dibenz 14:19 different 22:15 digging 19:11 direct 8:14 directly 5:17 dismissed 22:4 disposal 18:5 19:23 distribution 12:24 14:3 districts 19:9 disturbing 19:13 division 1:15 4:6 7:14 dnrec 5:17 6:3 7:14,19,21 8:3 8:13 9:4,18,22 10:4 11:15,17 12:21 14:13 16:18 17:8,12</p>	<p>e e 2:1 25:1,1 early 10:18,20 earth 19:12 eco 15:18,22 ecological 15:20,22 eight 10:15 12:9 14:9 either 4:2 elevated 18:5 eliminate 11:13 email 22:21 enable 18:15 encourage 4:18 23:22 24:10 encourages 9:10 enforcement 9:5 enrolled 8:23 9:17</p>	<p>equipment 10:13 eurofins 13:1 evaluate 11:12 evaluated 15:12 evening 3:1,7 4:7 7:18 21:22 22:3 23:14 event 21:24 everybody 3:3 3:5 4:19 23:22 24:10 everyone's 20:19 evidence 10:18 excavating 19:12 excavation 15:14 16:5 18:4 19:22</p>	<p>f f 25:1 fact 7:8 failed 16:12 fantastic 24:12 february 17:7 feel 22:4,5 24:3 feet 12:10,15 12:16 14:10 field 12:23 fieldwork 12:7 figure 13:9,12 filling 10:18 15:2 final 18:12,20 19:2</p>

<p>find 4:12 finding 15:3 first 3:5 4:21 8:15 floor 4:5 7:13 fluoranthene 14:19 focus 14:4 folks 7:11 followed 20:5 following 5:23 6:2 14:14 16:17 17:18,20 19:5 20:12 foot 18:2 foregoing 25:4 foremost 4:21 form 22:18 formal 4:21 5:18 6:20 21:14 23:15 found 14:15 15:1,19 16:10 16:22 free 24:4 further 4:20 13:4 14:22 21:16</p>	<p>gentlemen 7:18 20:22 geoprobe 13:15 getting 4:10,12 give 22:11 given 4:14 5:10 6:18 11:20 go 3:3 4:11,20 20:16 22:16 23:22 goal 8:13 goes 11:16 going 3:3 4:1,7 6:10,11,13 7:12 22:14 gold 1:12 good 3:1 7:18 gp 13:15 grading 19:12 greater 12:16 green 10:12 16:8 ground 12:10 12:11,14,15,17 13:17,22 14:10 guidance 18:15</p>	<p>hazardous 8:21 9:1,2,7,12,22 health 10:2 11:11 13:3 15:7,9,16 16:1 16:3 17:23 hydrologist 1:16</p>	<p>human 10:2 11:11 13:3 15:7,9,16 16:1 16:3 17:23 hydrologist 1:16</p>
	h		i
g	<p>h 14:19 ha 13:20 hall 4:23 hammer 13:17 hand 13:21 25:14 handle 18:16</p>	<p>hear 4:10 23:16 23:16 hearing 1:9,14 2:3,6 3:1,8,13 3:17,18 4:10 4:22 5:3,10,12 5:15,18,19 6:6 6:9,22,24 7:10 17:13 20:16,21 20:23 21:2,5,7 21:10,13,15,19 21:23 22:8,16 22:20,24 23:1 23:6,7,9,10,23 24:13,14 25:4 hearings 6:4 23:15 held 6:14 helping 7:23 hicks 1:5 3:9 7:22 8:4,10 10:8,9 11:1 13:11 17:14 20:19 high 10:24 history 8:4 10:7 hsca 9:2,3 14:15 15:8</p>	<p>identified 15:8 21:12 identify 11:10 11:21 ii 1:15 images 10:22 imminent 9:7 impacted 18:3 impervious 18:3 implement 19:21 implementati... 18:8,17 important 5:10 7:2 importantly 23:18 inches 12:14 include 8:20 19:4 included 5:19 6:17 incorporated 5:12 21:14 23:10 24:7 indeo 14:20</p>

<p>indicated 25:6 individual 13:10 indoor 15:14 16:5 industrial 15:3 19:9 informal 4:23 information 3:24 4:22 7:24 8:3,8 23:23 inside 10:24 installed 13:21 installing 12:9 instrumental 7:23 integrity 20:6 intent 11:20 interest 4:3 interested 25:12 interference 19:10 intersection 10:10 introduction 2:3 introductory 3:14 4:5 investigation 8:7 11:6,7,18 11:19,21,23 12:2,3,6,8 13:6 14:8 16:17</p>	<p>investigations 8:6 involved 11:16 12:9 issuance 18:12 18:20 19:2 issued 17:6,10 17:14 20:12 items 20:8</p> <p style="text-align: center;">j</p> <p>jarred 13:18 14:1 join 3:6 joined 3:23 7:20 journal 17:3 june 11:24</p> <p style="text-align: center;">k</p> <p>katera 1:17 keep 3:22 22:7 kin 25:11 kind 4:23 7:7 11:1 knew 14:5 know 3:11,23 4:1 23:19 known 9:3</p> <p style="text-align: center;">l</p> <p>lab 12:22,22 14:14 laboratory 13:1,19 14:1 14:13</p>	<p>ladies 7:18 20:22 land 19:13 lastly 7:2 20:11 lead 14:23 learn 14:7 23:24 learned 4:17 learning 4:1 legal 4:22 16:24 23:2 letters 13:14 level 8:16 10:1 levels 14:15 15:8 liabilities 9:21 liable 9:20 lighter 13:9 limit 22:11 24:2 24:3 limited 5:14 6:5 11:17,23 22:9 limitless 24:1 line 13:8 lines 13:7,9 link 22:18,20 lisa 1:14 3:12 list 3:21 20:14 listed 23:1 little 8:12 10:4 10:7,24 live 21:23 22:2 22:8 23:6,17 living 16:12,13</p>	<p>local 8:17 located 10:10 location 13:5 locations 13:14 13:20 long 8:24 9:23 19:21,24 20:1 23:8 24:5 look 23:23 lot 4:17 15:2 23:24 its 20:4 lukens 12:22</p> <p style="text-align: center;">m</p> <p>machine 25:7 made 5:8 7:3,4 7:8 22:14 23:12 25:10 maintain 10:1 maintenance 9:24 make 5:16 13:10 23:18,24 manage 8:15 management 18:9,10,14 19:16,18 manager 1:15 7:19,22 manganese 14:23 manufacturing 19:9 map 13:5</p>
---	---	---	---

march 17:11,15	moore 1:17	notices 23:2	organic 12:20
marked 13:20	mounted 13:16	number 6:4,7	12:20 14:17
material 24:4	moving 19:12	22:6	15:1
materials 18:9	multiple 13:7	o	organizations
18:10,14 19:16	n	observations	5:20
19:17	n 2:1	12:23	original 17:6
matter 4:3,11	name 3:12 7:19	offer 6:8 21:17	ou 10:8 20:11
5:8,10,14 6:6	11:18	21:23 22:6,8	outcome 25:12
21:5,14 23:3,9	naphthalene	23:16,19	outdoor 15:14
meaning 12:14	14:20	offered 24:9	16:5
measures 10:1	narrating 7:15	offering 4:7	own 9:20
meat 17:16	natural 1:2	office 19:1	p
mechanisms	need 4:20 11:13	officer 1:14,16	p.m. 1:11 3:2
5:22 22:13	18:11 19:6,7	2:3,6 3:1,13	24:14
media 5:21	19:20	5:18 20:21,23	page 2:2 4:11
meeting 4:23	needed 12:3	21:7,10,19	4:18 6:22 21:5
members 22:1	14:16 20:2	22:24	21:13 22:16,20
mentioned 6:4	negative 18:1	official 6:20	23:1,23 24:2
6:23 9:16 14:9	neither 25:11	25:14	parameters
16:4 17:19	new 19:1	offsite 18:6	4:21 6:3 22:13
23:4	news 17:2	okay 7:17 21:7	parcels 10:15
metallic 13:22	newspaper	21:10	13:10
metals 12:21	17:2	once 17:1 20:6	park 8:4,7 10:8
14:12,21,24	nickel 14:24	ones 16:4	10:9,9,13,14,21
18:5	non 15:11	online 24:11	11:1 13:11
method 19:23	16:12	open 6:11,14	14:6 15:6 16:7
mind 22:7	nonresidential	7:11 10:12,17	16:7 17:14,18
minutes 3:16	19:8	10:21 23:21	20:19
22:9	normally 21:22	opportunity	part 11:5
mohammed	notary 25:17	5:6	participants
1:19	note 6:2	option 18:21	1:10 25:6,10
monitor 20:6	notes 24:1	19:22	parties 9:6,19
monitoring	notice 1:9	orange 13:8	party 5:20,20
9:24 20:4	16:24 17:9,12	order 6:7 20:5	25:11
	25:5		

<p>paul 1:15 2:4 4:6 7:13,14,19</p> <p>pcbs 12:21 14:12</p> <p>people 5:4 7:9 16:13 23:15,19</p> <p>perform 3:7</p> <p>performed 19:18</p> <p>period 4:16 6:13,17 10:3 17:4,9,10</p> <p>periodicals 17:3</p> <p>permits 23:16</p> <p>permitted 19:8</p> <p>person 13:22</p> <p>pesticides 12:21 14:12</p> <p>phas 18:5</p> <p>phase 11:17,18 11:20,23 12:1</p> <p>photograph 10:23</p> <p>physical 3:19</p> <p>physically 13:21</p> <p>pink 16:9</p> <p>place 25:6</p> <p>placed 20:7</p> <p>placement 18:2</p> <p>plan 1:5 3:9 8:9 16:19,20,22 17:1,6,8,17,19 17:21 18:9,10</p>	<p>18:10,12,14,20 19:3,16,18,19 19:21,24 20:1 20:4,4</p> <p>platform 3:20 5:4 7:7 23:14 23:15,17</p> <p>playground 10:11,13</p> <p>please 6:2</p> <p>pneumatic 13:16</p> <p>points 12:17</p> <p>portion 21:24</p> <p>pose 11:10</p> <p>post 4:14</p> <p>postal 22:23</p> <p>posted 4:10 6:21 21:4</p> <p>potential 8:16 9:12 15:9,12 15:20</p> <p>potentially 18:16</p> <p>pounds 13:17</p> <p>powerpoint 21:12</p> <p>precluding 9:13</p> <p>preparation 18:7,17</p> <p>prepare 19:20</p> <p>preregister 22:1 23:18</p>	<p>preregistered 21:22</p> <p>presence 9:12</p> <p>present 11:12 11:22 15:21</p> <p>presentation 2:4 4:8,9,12 7:15,24 8:2 9:12 20:18,20 21:3,13 22:9 24:10</p> <p>presented 13:8</p> <p>pretty 10:16</p> <p>prevent 17:23</p> <p>previously 6:4 6:23 14:9</p> <p>prior 5:7 19:14 23:6,12</p> <p>prioritize 8:14</p> <p>procedures 3:18</p> <p>proceed 21:24</p> <p>proceeding 5:1 5:24 6:10,20</p> <p>proceedings 3:4,13 7:5 20:21</p> <p>process 13:24</p> <p>program 1:15 7:19 8:22,23 8:24 9:9,16,19 9:23 11:5,6 12:4,5</p> <p>programs 8:18 8:19</p>	<p>project 1:16 4:2 5:2 7:22</p> <p>projects 23:16</p> <p>properties 9:11 9:14</p> <p>property 9:20 9:21 11:7 16:13,14,15 19:7</p> <p>proposal 4:18 7:4,6,8</p> <p>proposed 1:5 3:9 5:5 7:1 8:9 16:19,20,21,22 17:1,6,7,17,19 21:11</p> <p>protection 10:2</p> <p>provide 5:4,6 7:7 18:15 23:15</p> <p>provided 11:17 23:11</p> <p>provides 9:4</p> <p>providing 5:5</p> <p>public 1:9 3:8 4:22 5:3,6,11 5:22 6:3,13 7:6 7:7 8:17 10:21 16:23 17:4,9,9 17:10,11,12,13 22:1,18 23:15 23:17 25:17</p> <p>publication 17:1</p>
---	--	---	--

<p>published 17:19 23:3</p> <p>publishing 17:7</p> <p>purpose 4:24 5:3 6:24 8:5 11:8</p> <p>pursuant 1:9 3:17 25:5</p> <p>put 4:16 7:23 16:18,22 20:18 24:5</p> <p>pyrene 14:18 14:20</p>	<p>record 4:8 5:12 5:19,19,23 6:9 6:18,19 7:1,10 20:16 21:2,11 21:15,17 22:7 23:11,20,21 24:7 25:10</p> <p>recorded 25:7</p> <p>recorder 19:2</p> <p>recreator 13:3 16:6,6,16</p> <p>recreators 14:5 15:15 16:14</p> <p>reddish 16:10</p> <p>redevelopment 9:10,13</p> <p>reduce 8:15 11:13</p> <p>referred 9:2 10:8 11:7 18:24</p> <p>reflect 21:11</p> <p>regard 7:1</p> <p>regarding 3:8 16:1</p> <p>regardless 3:23</p> <p>registered 1:12 25:17</p> <p>relate 10:6</p> <p>related 23:8</p> <p>relative 11:12</p> <p>relatively 10:24</p> <p>release 9:7,7</p> <p>remain 6:11 7:10</p>	<p>remarks 2:6 3:14 4:5 21:21</p> <p>remedial 1:6 3:9 8:6,9,18,19 9:24 11:6,7,13 12:6,8 16:19 16:21 17:21 18:12 19:3 20:3,9,10,12</p> <p>remediation 7:20,21 8:3,13 10:5 17:21</p> <p>remedy 8:9 17:17 19:11</p> <p>remember 7:3</p> <p>remind 5:13</p> <p>remote 1:10</p> <p>report 16:18 20:9</p> <p>reported 19:1</p> <p>reporter 1:12 2:7 25:17</p> <p>reporter's 4:13 6:21</p> <p>representative 4:6</p> <p>representatives 24:9</p> <p>request 17:8,13</p> <p>requesting 21:23</p> <p>required 13:4 15:9 17:20,20 19:17 20:10,12</p>	<p>requirement 17:23 18:8 19:24</p> <p>requirements 20:5</p> <p>resident 16:12</p> <p>residential 13:3 16:4</p> <p>residents 15:14</p> <p>resources 1:3</p> <p>response 8:15</p> <p>responsible 9:6</p> <p>rest 24:12</p> <p>restrict 18:3</p> <p>restricted 19:7</p> <p>restriction 19:6 19:11</p> <p>restrictions 19:5</p> <p>results 8:6 12:23 13:2 14:8</p> <p>reuse 9:10</p> <p>review 12:1 24:4</p> <p>ri 11:8,8 14:7 17:19</p> <p>right 7:4,13 22:19</p> <p>risk 8:15 11:12 13:4 15:7,9,11 15:16,18,22 16:1,3,9,15,16 18:1</p>
q			
<p>quantity 14:21</p> <p>quite 8:20</p>			
r			
<p>r 25:1</p> <p>ran 16:3</p> <p>ranging 12:10</p> <p>rather 5:3 6:11</p> <p>ready 3:3 4:10 4:13 7:15 17:1</p> <p>real 9:11</p> <p>realizes 5:17</p> <p>really 11:18,21 17:16</p> <p>received 5:9 6:5,16,22 17:8 17:13 24:5</p> <p>recently 8:10</p> <p>recognizing 22:2</p>			

risks 8:16 11:14 15:22 16:10 rs 14:13 run 13:24	13:7,12 14:3 16:1,11 22:16 selected 14:22 19:22 selection 8:10 17:18 semi 12:20 14:17 15:1 send 22:21,23 sent 12:24 13:19 14:1,16 september 12:7 serve 3:13 service 22:23 session 4:22 set 4:20 settle 9:21 shahrose 1:16 shahroze 7:21 7:22 shallow 12:13 12:15 14:11 15:13 sheets 3:19 shoot 22:19 shorthand 25:7 shortly 17:7 sign 3:19 signature 25:16 significant 8:14 8:20 sir 7:16 site 1:5 3:10 7:22 8:4,5,8,10 8:23 9:16,18	10:1,6,8,16,18 11:1,4,9,10,16 11:20,22 13:7 13:7,11 14:4 15:13,21 16:22 18:8,17,20 19:13,21 20:6 20:7,15 sites 8:17 9:6 situation 4:24 size 10:15 skilled 1:12 25:17 social 5:21 soil 12:9 13:13 13:18 15:13,17 17:24 18:2,4,4 18:6,16 soils 10:9 11:9 12:16 14:11 20:11 solely 5:14 6:5 19:7 soon 6:22 sorry 6:12 southbridge 10:11 spatial 12:23 specific 18:8 19:21 24:2 specifically 23:8 split 13:17 spoons 13:17	stage 3:15 stand 13:20 standard 3:17 22:23 stands 13:15 state 1:1 statement 11:12 statements 25:6,10 states 22:23 status 8:17 statutory 6:24 9:5 stewardship 8:24 9:23 19:21,24 20:1 stone 18:2 stop 8:14 street 10:10 subchapter 18:24 subject 5:14 6:5 23:9 submit 5:22 7:9 22:6,17,19 24:2,3 submittal 17:20 20:8 submitted 5:17 6:15 18:11,19 20:2 22:15 substance 8:21 9:1,3,8,13,22
s			
safely 18:16 safety 18:10 sample 13:5,14 samples 11:19 12:18,19,24 13:13,15,24 14:4,5 sascha 1:19 satisfaction 19:18 says 22:17 schedule 20:5 schedules 3:6 screened 12:19 14:11 screening 12:22,22 14:13 14:14,15 15:8 seal 25:14 secretary 3:12 6:18 23:11 secretary's 5:7 6:8 section 7:20,21 8:3,13 10:5 17:22 see 3:24 4:13 5:21 10:22 11:2 12:12			

<p>summarizes 16:20 summer 11:17 supervision 25:8 sure 5:16 23:18 surface 12:10 12:11,13,14,14 12:15,17 14:11 14:11 svocs 14:12</p>	<p>third 5:20 19:15 threat 9:7 11:10 three 17:11,14 22:9,15 time 3:6 10:3 15:23 20:20 21:17,18 25:5 timeline 11:15 times 17:24 24:3 today 4:2 10:22 together 7:23 16:19 20:18 tonight 3:7,20 3:21,23 4:10 5:24 6:20 7:20 20:18 23:6,13 24:9 tonight's 3:4,13 4:24 5:3,15 6:6 6:10,24 7:5,24 8:2 23:9 top 16:2 toward 21:24 town 4:23 track 3:22 transcribed 25:8 transcript 4:13 6:21 25:9 transcription 25:9</p>	<p>transfer 9:14 trees 10:17 tremendously 8:1 trespasser 16:6 trespassers 15:15 truck 13:16 true 25:10 turn 7:12 20:21 turning 4:5 twisting 13:22 two 6:7 10:19 11:17,18,20,23 12:1 19:10 20:8 type 11:19 typically 13:16 15:1</p>	<p>uniform 18:23 united 22:23 units 16:2 urban 15:2 use 15:6 16:14 19:5,6,6 22:22 user 16:7 uses 15:3 19:8 utilizing 8:18 14:6 16:7</p>
<p>t</p>			<p>v</p>
<p>t 25:1,1 table 15:24 16:2 take 3:15 9:5 22:18 taken 1:9 10:1 10:23 25:5 takes 17:16 talk 5:23 tax 10:15 13:10 term 8:24 9:23 19:21,24 20:1 thallium 14:24 thank 3:5 4:2 7:17,24 20:22 20:23 21:19 24:8 thanks 24:12 thereof 25:12 thing 22:7 things 15:3 21:1</p>		<p>u</p>	<p>various 5:22 8:18 23:2,19 vegetated 10:17 vest 1:14 2:3,6 3:1,12 7:17 20:23 21:7,10 21:19 vet 7:6 videoconfere... 1:10 viewing 4:18 virtual 3:8 virtually 3:18 3:21 visitors 10:13 14:6 vocs 14:12 voiced 5:11 volatile 12:20 12:20 14:17 15:1 voluntary 8:22 9:15,18,19</p>

11:5 12:4,4	written 19:14
w	22:19,24
want 3:5 5:16 24:1,8	x
waste 4:7 7:14	x 2:1
way 4:2,9 5:1 21:8	z
ways 22:6,16 23:19	zoom 3:20
web 4:11,18 21:5,13	
wednesday 1:11 3:2	
week 24:13	
weight 6:16 23:5,10 24:6	
wicks 1:18	
wilmington 8:24 9:17	
wish 7:11 9:21 21:17	
wishes 6:8	
witness 25:14	
work 8:20,20 17:21 19:17 20:4,15	
worker 16:5,5 16:6	
workers 15:14 15:14,15,15 18:15	
workshop 4:24	
worst 8:15	
writing 22:15	